August 20, 2010 File: 44200-50/EMB #10-10

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Myles Materi

Robert Hrabinsky
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RE: MYLES MATERI v BC EGG MARKETING BOARD - SUMMARY DISMISSAL DECISION

Introduction

On June 24, 2010, the British Columbia Farm Industry Review Board (BCFIRB) received a Notice of Appeal from the appellant, Miles Materi, appealing a June 1, 2010 decision by the British Columbia Egg Marketing Board (Egg Board) to revoke his layer quota allotment of 500 birds.

On July 13, 2010, a prehearing conference was held, at which time the Egg Board advised that it would be making a summary dismissal application, and at which time a submissions schedule was set out.

On July 27, 2010, pursuant to that schedule, the Egg Board applied to the BC Farm Industry Review Board (BCFIRB) to have the appeal summarily dismissed. The Egg Board relies on ss. 31(1)(c) and (f) of the *Administrative Tribunals Act*, which provisions apply to this appeal by virtue of s. 8.1(1) of the *Natural Product Marketing (BC) Act*. Sections 31(1)(c) and (f) of the *Administrative Tribunals Act* state:

> **Summary dismissal**
>
> **31** (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:
>
> (c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process.
>
> (f) there is no reasonable prospect the application will succeed.

Mr. Materi responded by letter dated August 2, 2010. The Egg Board confirmed on August 4, 2010 that it did not intend to file a reply.

Background

Mr. Materi's disputes with the Egg Board have a lengthy history. For the purposes of this decision, the following background will suffice:

- Mr. Materi was a registered egg producer and operates or has operated Mountain Morning Farms egg grading station.

- Mr. Materi held an allocation of 500 layers of egg layer quota, which he acquired in 2002.

- The Egg Board became concerned that Mr. Materi's production unit housed over 1000 layers, well in excess of his quota allocation.

- Mr. Materi argued that the excess layers did not belong to him, but belonged to his wife. By March 2006, Mr. Materi claimed that all of the layers in the barn belonged to his wife.

- In February 2006, Mr. Materi applied to transfer his 500 layer egg quota. The Egg Board conditionally approved this application, subject to the resolution of certain outstanding issues including the requirement that "all birds currently housed at [his] egg production must be removed".

- In April of 2006, Mr. Materi advised the Egg Board that "my birds are gone" and acknowledged that it would be necessary for his wife to "get rid of her production" but stated that this would remove their source of brown eggs for the grading station.

- In July 2006, Mr. Materi informed the Egg Board that he would be "ramping up production of the unregulated flock".

- In October 2006, the Egg Board again wrote to Mr. Materi advising him of the requirement to remove all birds from his property before his quota could transfer.

- Mr. Materi appealed to BCFIRB regarding the preconditions imposed by the Egg Board with respect to his proposed sale of his quota. The appeal was heard over two days in April 2007.

- On August 3, 2007, the appeal was dismissed by BCFIRB: *Materi v. British Columbia Egg Marketing Board*, August 3, 2007.

- In September 2007, the Egg Board issued a "walk in" seizure receipt for the "layers in excess of 500(Layer Quota)" at Mr. Materi's production unit. No birds were physically removed from the property at this time and the Egg Board did not elect to dispose of the over-quota layers.

- Sometime after the walk-in seizure, Mr. Materi apparently ceased production of eggs, although he continued to hold quota for 500 layers.

- In November of 2008, Mr. Materi filed a Statement of Defence and Counterclaim in litigation with the Egg Board, in which he stated that he was "forced to destroy his flock of approximately 300 chickens located at the 70th Avenue Property shortly after the Seizure Receipt was issued".

- Field inspections conducted by Egg Board staff in March 2009 found that no layers were present.

- In March 2010, the Egg Board sent a letter to Mr. Materi stating that "…you have not kept or maintained layers for more that 180 consecutive days. You currently hold a Layer Quota allotment of 500 layers. Pursuant to subsection 7(1) of the Board's Standing Order, your Layer Quota is subject to cancellation". Mr. Materi was asked to show cause why his quota should not be revoked and his licence cancelled.

- Mr. Materi's response was a compendium of earlier written materials plus an "invoice" from Mountain Morning Farms to the Egg Board for the amount of $188,513.00 for care of Egg Board property.

- On June 4, 2010, the Egg Board issued to Mr. Materi its June 1, 2010 decision under appeal. The decision under appeal states that as no cause had been shown as to why Mr. Materi's layer quota allotment of 500 layers should not be revoked, the Egg Board immediately cancelled this layer quota pursuant to its Orders and the Egg Marketing Scheme.

Position of Mr. Materi

At the July 13, 2010 pre-hearing conference, Mr. Materi outlined his grounds for appeal. As described in the pre-hearing report sent out to all parties, they are:

1. In September 2007, the Egg Board seized all of the appellant's birds in excess of 500 layers, but did not remove the birds seized and has not since lifted the seizure notice. The appellant has 36 birds left of the original group seized in 2007 that remain the property of the Egg Board. The appellant does not own any layers and is only caring for the Egg Board's seized property.

2. The Egg Board has now removed the appellant's quota saying it has not been used in 180 days. However, the quota cannot be used by the appellant until the Egg Board removes the seized property or gives notice to lift the existing seizure notice. This is because the Egg Board's seized property is currently being stored in the appellant's barn and the appellant cannot have two flocks in one production unit. It is unfair of the Egg Board to take the quota while forcing the appellant to take care of the Egg Board's seized property.

3. To clarify, the appellant admits that he is not keeping or maintaining 500 layers. Because he is forced to care for the Egg Board's seized property and because he cannot have 2 flocks on one

production unit, he cannot use his quota. If the Egg Board had told him to dispose of the seized property he could have done so and placed birds under his 500 layer quota.

4. The appellant is following the rules as outlined in the Egg Board's seizure notice. The seizure notice says the product seized is to be disposed of only by the Egg Board or in accordance with the Egg Board's order. It is up to the Egg Board to deal with their seized product. The Egg Board has seized birds on his two separate properties and so has seized all birds.

In his August 2, 2010 response submission to the Egg Board's summary dismissal application, Mr. Materi argued again that because the seized birds are the property of the Egg Board he could not keep or maintain layers up to his quota allotment. He stated that he did speak to the Egg Board and on April 27, 2010 sent a letter to the Egg Board regarding the seizure but no response was ever provided.

Position of the Egg Board

The Egg Board states that under its Consolidated Orders sections 14 (1) and (2), there is an obligation to produce quota and a failure to do so for more than 180 consecutive days makes the quota subject to cancellation. As confirmed by field staff, Mr. Materi had not kept or maintained layers for more than 180 consecutive days. On March 24, 2010, the Egg Board sent a "show-cause" letter asking Mr. Materi to give reasons why his quota should not be revoked. His response was a compendium of previous correspondence and an invoice to the Egg Board for $188,513.00 for expenses incurred in maintaining Egg Board property. On June 1, 2010, the Egg Board cancelled Mr. Materi's allocation of 500 layers of quota. The Egg Board argues that it is acting within its jurisdiction to cancel Mr. Materi's quota under its Standing Order and the *British Columbia Egg Marketing Scheme* which state*:*

At the time it sent its show cause letter to Mr. Materi in March 2010, the relevant Egg Board order was Standing Order section 7(1), which provided:

> Unutilized Quota - It is a condition of the issue of Quota that a Registered Producer who fails to keep or maintain the number of layers for which he holds a Quota for 180 consecutive days, the Quota may be cancelled *pro tanto* by the Board and the Board may reissue the cancelled portion.
>
> Where a producer has leased a portion of his Quota and following the expiry of the lease, the producer is unable to utilize the leased Quota within the conditions of SECTION 16(f), the Quota may be cancelled *pro tanto* by the Board and the Board may reissue the cancelled portion.

At the time the Egg Board made its decision revoking the quota, a new Consolidated Order had come into effect (May 12, 2010), but which made no substantive change to the duty to produce or to the law governing this ongoing matter:

> 14(1) The Board may cancel all or any part of the Layer Quota:
>
> (a) allotted to a Registered Producer who, for 180 consecutive days, fails to keep or maintain the number of Layers authorized to be produced under the Layer Quota

allotted to that Registered Producer; or

(b) allotted to a person who has not commenced keeping or maintaining the number of Layers authorized to be produced under the Layer Quota allotted to that Person within 180 calendar days from the date that such Layer Quota was allotted to such person.

(2) The Board may cancel any licence held by:

(a) a Registered Producer who, for 180 consecutive days, fails to keep or maintain the number of Layers authorized to be produced under the Layer Quota allotted to that Registered Producer; or

(b) a Person who has not commenced keeping or maintaining the number of Layers authorized to be produced under the Layer Quota allotted to that Person within 180 calendar days from the date that such Layer Quota was allotted to such person.

50. This Consolidated Order supercedes and replaces all Orders made by the Board prior to the effective date hereof and all such prior Orders are hereby revoked, but such revocation shall not affect any contraventions committed or any penalties incurred under the Orders so revoked.

Subsection 37(d) and (h) of the *British Columbia Egg Marketing Scheme, 1967* gives the Egg Board jurisdiction to remove quota. It reads as follows:

Authority of board

37 The board shall have authority within the Province to promote, regulate and control the production, transportation, packing, storing and marketing, or any of them, of the regulated product, including the prohibition of such production, transportation, packing, storing and marketing, or any of them, in whole or in part, and without limiting the generality of the foregoing shall have the following authority:

(d) to revoke or reduce in whole or in part unused quotas or portions of quotas, and to reissue such quotas in whole or in part as the board may deem proper;

(h) to cancel any licence or permit for violation of any provision of the scheme or of any order of the board or of the regulations.

The Egg Board argues that this appeal should be summarily dismissed on two accounts – that it is frivolous and vexatious, and that it cannot succeed. Its arguments are as follows:

"Frivolous and Vexatious"

The Egg Board claims that this appeal is frivolous and vexatious. It argues that Mr. Materi's assertion that the over-quota layers are the "property of the Egg Board" is patently absurd and "may well be the most transparent and juvenile effort to evade responsibility in the history of regulated marketing". The Egg Board cites BCFIRB's August 3, 2007 decision in *Materi v. British Columbia Egg Marketing Board* which states at paragraphs 37 and 40 that Mr. Materi has a "mindset that the Standing Order is a technicality which can be easily circumvented" and his

"shocking" "abdication of responsibility". The Egg Board states that Mr. Materi's over-quota layers are obviously "*his*" birds and there can be no merit to his assertions that he cannot use his quota until the Egg Board removes "its" flock from "his" barn.

"No reasonable prospect of success"

The Egg Board also maintains that the argument of Mr. Materi that his failure to keep or maintain his 500 bird quota is merely his effort to comply with paragraph 2(c) of the Standing Order cannot succeed and depends entirely upon the "patently absurd" notion that Mr. Materi's over-quota layers are the "property of the Egg Board". It notes that Mr. Materi could simply have requested written authorization from the Egg Board to dispose of the over-quota layers, which he did not do. The Board argues that the seizure order specifically relates to "Layers in excess of 500 (Layer Quota)" and therefore had no effect on Mr. Materi's ability to keep or maintain the 500 layers of his quota.

DECISION

Summary dismissal under ss. 31(1)(c) and (f) of the *Administrative Tribunals Act* is an exceptional remedy. An appeal should only be summarily dismissed on these grounds where the panel is convinced that the appeal is devoid of merit and bound to fail. That is particularly so where, as here, the appeal is about quota revocation.

In this case, having considered all the material before us, and in particular Mr. Materi's justifications for his failure to produce his quota, the panel is convinced and has no hesitation in concluding that the test for summary dismissal is met.

We begin with the duty to produce one's quota. All quota holders are taken to know that producing one's quota allocation is a fundamental pillar of supply management, and a fundamental responsibility of every quota holder. Hence the requirement set out in s. 7(1) of the previous Standing Order and s. 14 of the current Consolidated Order.

Extraordinary circumstances do sometimes arise where a person finds that he or she is unable to produce their quota. Whether those circumstances warrant cancellation or some other sanction can only be determined on a case by case basis. That is why the Egg Board has a "show cause" process.

In this case, Mr. Materi admits he has not produced his quota. The only justification Mr. Materi has offered is a technical legal argument. He says that the Egg Board's 2007 seizure order regarding the illegal (over-quota) flock made it legally impossible for him to utilize his <u>legal</u> flock. He relies on s. 2(c)(i) of the Egg Board's Standing Orders which were in effect when the seizure order was made:

> No person shall keep or maintain, in concert with another person or persons, such layers in facilities contiguous to or a part of each other, such that in aggregate, the number of layers kept or maintained, would if kept or maintained by one person in such facilities, require that person to obtain a licence and register as a Registered Producer.

Mr. Materi says that once the Egg Board seized the over-quota flock, the Egg Board became the "owner" of that flock, and it became illegal for him, under the Egg Board's own orders, to produce his quota in concert with that Egg Board flock.

We find this argument, which depends on Mr. Materi's interpretation of s. 2(c)(i) above, to be patently unreasonable and utterly devoid of merit. It is bound to fail.

The seizure order applied only to the layers "in excess of the 500 (Layer Quota)". On its own terms, the seizure order expressly, plainly and properly recognized and excluded Mr. Materi's quota production rights. The very point of a seizure order is to stop unlawful production, not to stop lawful production. The seizure order respected Mr. Materi's quota rights, and recognized the fundamental importance of lawful quota production, discussed above.

Mr. Materi seeks to give section 2(c)(i) the unprecedented and absurd interpretation that any seizure of over-quota production would shut down the entire operation. Section 2(c)(i) has no application to Board seizures of illegal over-quota birds. A person whose illegal flock is seized by the Board is not suddenly keeping layers "in concert" with the regulator. Nor does a seizure order have the absurd effect of requiring the regulator to obtain a licence from itself.

Every law has a purpose. The purposes of section 2(c)(i) – and its present iteration in the definition of "Unregistered Producer" – are to ensure that persons do not circumvent regulation by putting their "exempt" flocks together in one large, unlicenced production unit. That has no application whatsoever to a Board seizure of an illegal over-quota flock. The attempt to compare the situation discussed in the BCFIRB's August 2007 appeal decision involving Mr. Materi and his wife (paragraph 27-29) with this situation, involving a seized flock, is misplaced.

Mr. Materi's interpretation is patently contrary to the plain language and purpose of s. 2(c)(i), and with the larger purposes of the Standing Orders and the new Consolidated Order. There is no reasonable construction of the Egg Board's Orders that could rationally be taken to mean that a grower cannot produce up to the amount of quota allocated to him, especially when a seizure order expressly recognizes that right.

Mr. Materi has not suggested that his failure to produce his quota was based on advice from the Egg Board, let alone that he even raised his interpretation of s. 2(c)(i) with the Egg Board. While Mr. Materi refers to the April 27, 2010 letter he wrote to the Egg Board following the seizure, that letter contains no reference to any concern as to whether Mr. Materi can produce his quota birds. Nor would one expect it would, given that the seizure order recognized his right to produce his quota and given the fundamental and well-recognized responsibilities of quota holders.

The issues Mr. Materi has raised regarding the seized birds are totally collateral and irrelevant to Mr. Materi's fundamental obligation to produce his quota. He has admitted that he has not produced his quota for at least 180 consecutive days. He has offered no plausible justification - either in response to the Egg Board's show cause letter, in the grounds of appeal to BCFIRB, or in his response to the summary dismissal application – for his failure to meet his fundamental responsibility to produce his quota.

ORDER

In our view, it would be an improper use of the time and money of the parties and of BCFIRB for this matter to proceed to a full appeal hearing. This appeal clearly and convincingly meets the test for summary dismissal under ss. 31(1)(c) and (f) of the *ATA*.

Accordingly, the Panel orders that this appeal be dismissed under s. 31 of the *ATA*.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD
Per:

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Suzanne K. Wiltshire, Presiding Member

_____
Sandi Ulmi, Vice-Chair

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Ron Bertrand, Member